IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

W.A.No.2681 of 2007

AGAINST THE JUDGEMENT IN WP(C).32113/2003 DATED 8.2.2005

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APPELLANTS/RESPONDENTS:-

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1. THE STATE OF KERALA,
   REPRESENTED BY SECRETARY TO FOREST DEPARTMENT,
   SECRETARIAT,
   THIRUVANANTHAPURAM.

2. CHIEF CONSERVATOR OF FORESTS (P),
   FOREST HEAD QUARTERS,
   THIRUVANANTHAPURAM.

3. THE DIVISIONAL FOREST OFFICER,
   TIMBER SALES DIVISION,
   PALAKKAD.

4. THE DEPUTY TAHSILDAR,
   REVENUE RECOVERY,
   TALUK OFFICE,
   KOLLAM.

BY SENIOR GOVERNMENT PLEADER SMT.K.MEERA

RESPONDENT/RESPONDENT:-

PREMA S. ANAND,
WIFE OF MOHANDAS,
DAS TIMBERS,
ERAVIPURAM,
KOLLAM-11.

BY ADV. SRI.N.D.PREMACHANDRAN
SRI.D.AJITHKUMAR

THIS WRIT APPEAL HAVING COME UP FOR ORDERS ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

H.L.Dattu,C.J. & K.M.Joseph,J.

W.A.No.2681 of 2007 & C.M.Appln.No.1223 of 2007

Dated, this the 19th day of November, 2007

JUDGMENT

H.L.Dattu,C.J.

The respondents in W.P.(C).No.32113 of 2003 have questioned the correctness or otherwise of the orders passed by the learned Single Judge dated 8.2.2005 in this appeal.

(2) The 1st respondent in the writ petition was the Secretary to the Forest Department. Respondents 2 and 3 were the Chief Conservator of Forests and the Divisional Forest Officer. They were all represented by the learned Government Pleader at the time of hearing of the writ petition and also while passing the impugned order.

(3) There is a delay of nearly **948 days** in filing the appeal. Therefore, an application under Section 5 of the Limitation Act is filed to condone the delay in filing the appeal. In paragraph 2 of the affidavit filed along with the application, they have stated as under:

> "2. The writ appeal is filed against the judgment of the learned Single Judge in W.P.(C).No.32113/2003. The impugned judgment was passed on 8.2.2005. Certified copy of the decree was obtained on 1.3.2005. After receipt of the copy, the records were placed before the then special Government Pleader (Forests), for legal opinion. As per the legal opinion dt.15.7.2005, it was stated that there was no scope for filing the appeal. However, the records were brought to the notice of the department, the Secretary, Forest & Wildlife Department had by letter dt.5.11.2007, stated that the judgment should be challenged in appeal. Accordingly, a letter was issued by the Chief Conservator of Forests on 30.7.2007 directing the

> Divisional Forest Officer, Timber Sales Division, Palakkad to take steps to file the appeal. I have come to the Advocate General's office on 14.8.2007 for the purpose of taking steps to file the appeal. By that time, the file had already been sent to the Records Section. I had requested to search out the file from the Records Section and the records were retrieved on 7.9.2007. The records were submitted on 5.10.2007 to the Special Govt. Pleader (Forests) for preparing the appeal. The memorandum of appeal was prepared on 10.10.2007. The said memorandum is being filed today".

(4) Fortunately, they admit the passing of the order by this Court, receipt of the copy of the judgment and lastly the receipt of the opinion furnished by the learned Government Pleader. Nearly after two years after receiving the orders passed by this Court and the opinion of the Government Pleader, the first respondent in the writ petition, who is none other than the Secretary to the Forest Department, has desired to file an appeal against the orders passed by the learned Single Judge. That is how the delay in filing the appeal is explained by the respondents-appellants.

(5) It is difficult to accept the explanation offered by the applicants. It is not the case that they were not aware of the orders passed by this Court. It is also not their case that the certified copy of the judgment was not delivered to them. Their only case is that the Secretary to the Forest Department nearly after two years decides to file the appeal against the orders passed by the learned Single Judge. This cannot be a ground or a reasonable and satisfactory explanation to condone the delay in filing the appeal.

(6) As we have already noticed, the Secretary to the Forest

Department was a party in the writ petition and he was represented by the learned Government Pleader and the learned Government Pleader has opined that it is not a fit case to file an appeal against the orders of the learned Single Judge.

(7) Since the appellants were fully aware of the orders passed by this Court and they did not choose to file the appeal within a reasonable time and since the explanation offered by the applicants is fully unsatisfactory, the delay in filing the appeal cannot be condoned by us. Therefore, the application filed for condonation of the delay in filing the appeal requires to be rejected and it is rejected.

(8) Consequent to the rejection of the application for condonation of delay in filing the appeal, the appeal also stands rejected.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.M.Joseph
Judge

vku/-